

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1867

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1867, entitled "A Bill for an Act Relating to Workers' Compensation."

This bill would extend medical services when a dispute exists between the injured employee and the employer or employer's insurer, until the Director of Labor and Industrial Relations (Director) issues a decision on whether medical care should continue. It allows the employer or employer's insurer to recover from the injured employee's personal health-care provider or other appropriate occupational or non-occupational insurer all sums paid for the disputed medical services after a designated date.

This bill is objectionable because it requires that an employer or employer's insurer continue to pay for medical treatments where the employer or employer's insurer considers the treatments proposed by the plan to be inappropriate, excessive, or for a non-compensable condition. In most cases these determinations are made after an Independent Medical Examiner concludes the individual is ready to return to work.

This bill does not limit the type of medical service covered; thus, it could conceivably apply to all medical procedures, up to and including surgery. Further, it allows the medical treatments to continue solely on the decision of the medical provider who may not be a licensed physician.

Responsibility for paying for these extra treatments would rest with either the provider or the insurer if the Department of Labor and Industrial Relations subsequently decided

they were not needed. This could result in a situation where the insurer has to pay for medical services that were determined unwarranted and unnecessary, likely resulting in higher workers compensation premiums since this adds to the workers compensation risk exposure of all businesses in Hawaii. Alternatively, if the provider is left with the bill, they may decide not to offer the treatment, which defeats the purpose of this measure.

The Department of Labor and Industrial Relations issued rules in May 2005 that improved the hearings process and mandated the use of evidence-based clinically tested, medical treatment guidelines and allowed for an alternative dispute resolution process in lieu of a Department of Labor and Industrial Relations hearing. These rules could have decreased the number of denials.

Ironically, these are the rules the Legislature suspended last year when they denied the Director of the Department of Labor and Industrial Relations rulemaking authority in this area.

Finally, this bill fundamentally changes the balance between employer and employee regarding the method by which medical care can be terminated. It essentially overrides the workers compensation medical fee schedule and negates the "reasonable and necessary" language in current Hawaii workers compensation law, thereby placing in jeopardy the fiscal integrity of the State's workers compensation system.

For the foregoing reasons, I am returning House Bill No. 1867 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'L. Lingle', is written over the printed name.

LINDA LINGLE
Governor of Hawaii